

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Case Number: D 0018/93

D E C I S I O N
of the Disciplinary Board of Appeal
of 21 October 1993

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
9 October 1992.

Composition of the Board:

Chairman: P. Gori
Members: G. Paterson
M. Lewenton
E. Bokelmann
Ch. Bertschinger

Summary of Facts and Submissions

I. The Appellant was notified in a letter dated 9 October 1992 that he had not been successful in the European Qualifying Examination held in April 1992. He received the following grades pursuant to Implementing provision VII under Article 12 REE:

Paper A : 3 Paper C : 4
 Paper B : 5

Paper D : 5.

II. The Appellant filed a notice of appeal on 19 December 1992, and paid the fee for appeal together with a 10 per cent surcharge on 22 December 1992. Grounds of appeal were filed on 19 January 1993. Following a communication pursuant to Article 8(4) of the Rules relating to Fees, the Appellant duly filed evidence pursuant to Article 8(3)(a)(iii) of the Rules relating to Fees in the form of a Certificate of Posting for a registered letter addressed to the EPO at its address in Munich and a statement that such letter contained a cheque for the fees.

III. The Appellant submitted in the Grounds of Appeal that for each of papers B and D, the question "On the evidence of his answer to this paper, is the candidate fit to practise as a professional representative before the EPO in the field covered by this paper?" (Implementing provision I under Article 12 REE) should be answered in the affirmative, for the reasons set out in nine pages of the Grounds of Appeal which followed. The Appellant also submitted that it was inappropriate to arrive at a negative answer to the above question where it is evident from a candidate's answer to a paper that this conclusion is to be reached for the reason only that the candidate had insufficient time to perfect or complete his answer.

Reasons for the Decision

1. The evidence filed by the Appellant and identified in paragraph II above is in accordance with the requirement of Article 8(3)(a)(iii) of the Rules relating to Fees, and the Board consequently considers that the period for payment of the fee for appeal was observed. Since the above evidence establishes that the condition set out in Article 8(3)(a)(iii) of the Rules relating to Fees had not been fulfilled ten days before the expiry of the period for payment of the appeal fee set out in Article 23(2) REE, the surcharge is payable and cannot be refunded. The requirements of Article 23(2) REE are satisfied and the appeal is accordingly admissible.

2. As stated *inter alia* in Decision D 1/92 (OJ EPO 1993, 357), "It is not the task of the Disciplinary Board of Appeal to reconsider the examination procedure **on its merits**. Only serious and obvious mistakes, allegedly made by an examiner when marking a candidate's paper and on which the contested decision is based, can be considered ... Value judgments are not, in principle, subject to judicial review."

In the present case, the Board has carefully considered the Appellant's submissions, which are primarily directed towards the contention that the Appellant should have received more marks for each of his answers to the questions in papers B and D. Such submissions are not directed to suggesting that serious mistakes of principle were made during the marking of these papers. In relation to these submissions concerning the marking of papers B and D, the Board is satisfied that the examiner's assessment of the Appellant's merits, on the basis of his answers to these two papers, was a value judgment which was made on the correct principles and which should therefore be supported by this Board.

The Board does not accept the Appellant's submissions to the effect that his failure to answer certain questions, or to complete his answer to certain questions, should not count against him if his answers to other questions in the paper were satisfactory and it is evident that he lacked time to complete all of his answers. Taken to its logical conclusion, this submission would mean that a candidate who answered only one question out of ten, but answered that question perfectly, would deserve to pass the paper if it was evident that he did not have sufficient time to answer the other nine papers.

3. Following the principles set out in Decision D 1/92, in the Board's judgment this appeal should be dismissed.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. BeerP. Gori